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Citizenship and the European Union

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1. Introduction

The idea and practice of European citizenship is relevant in two main ways to the recent controversy in Germany over plans by the governing Social-Democratic Party to reform citizenship law. One of these is that the concepts of citizenship and nationality continue to be thought of as synonymous in Germany but are now relatively distinct, both linguistically and politically, in several other national regimes and in the European Union (EU). Secondly, on the one hand, new German provisions will be more similar than before to the nationality laws of other member states by introducing a right [as opposed to a discretionary possibility] to citizenship through residence and legal naturalization, as well as ancestry. But, on the other, the decision on 16 March 1999 to abandon the possibility of dual-citizenship [or, in my language, nationality] means that, in this respect, the German approach to citizenship now runs counter to suggestions made by some specialists about the EU as a site of democratic practice.

This paper will open with a brief discussion of the distinctiveness of citizenship and nationality. This is necessary so that one can understand the following section outlining EU provisions. In conclusion, this paper will discuss some of the arguments about the prospects for EU citizenship, with special reference to loosening the overlap between the legal label of national identity and the normative practice of citizenship.

2. Citizenship and Nationality

As I have suggested elsewhere[1], there are good grounds for treating the overlap of citizenship and nationality as a matter of historical contingency and not as an analytically necessary connection. In short, nationality is a legal identity from which no rights need arise, though obligations might—as is obvious when nationals are called 'subjects'. Conversely, citizenship is a practice, or a form of belonging, resting on a set of legal, social and participatory entitlements which may be conferred, and sometimes are, irrespective of nationality—or denied, as in the case of women and some religious and ethnic minorities, regardless of nationality.

While borders had been porous in the Middle and Late-Middle Ages and migration normal, the strategic interests of new states lay in impregnability and control of persons with or without leave to cross frontiers. Nationality was an obvious criterion and proof of nationality a simple method of verification. The process of modernization in the new states went hand in hand with the construction of the nation. This served external and internal purposes. It created a sense of the 'Otherness' of those who were a threat to the strategic interests of political elites. And it fostered the loyalty or allegiance that induced willingness to be taxed to fund the defense of the state and to be enlisted into military service. Since 1945, allegiance is relevant less to military purposes than to the legitimacy of redistribution and the funding of welfare systems.[2]

The construction of the nation was promoted through the dismantling of feudal bonds and their replacement by a gradual extension of legal and political rights. So complete became the overlap between national identity and citizenship status that, in many political systems, even those with separate words, 'citizenship' and 'nationality' became interchangeable. And, according to Raymond Aron, it was a contradiction in terms to see

1 Meehan Elizabeth, Citizenship in the European Union, London: Sage 1993; Meehan, "European Integration and Citizens´ Rights: A Comparative Perspective", *Publius. The Journal of Federalism* 26 (4) Fall 1996.

2 Miller, David, "In Defence of Nationality", *Journal of Applied Philosophy* 10, 1993, 3-16.

citizenship rights as capable of being guaranteed by anything other than the state, more particularly the nation-state, and certainly not by a regime—the EU—that was not a state at all.[3]

But, using ‘citizenship’ as a synonym for ‘nationality’ can result in peculiar distortions of meaning. In late 19th century America, the Supreme Court ruled that a woman was, indeed, an American citizen but that being a citizen did not necessarily carry the right to vote. This empties the classical conception of ‘citizen’ of part of its core meaning and the ruling makes conceptual sense only if we substitute ‘national’ for ‘citizen’. In other systems, both terms are employed in legislation but as though ‘nationality and citizenship’ were all one word in which the first and last components were interchangeable. For example, except for one Article of the 1922 Constitution, it was not until 1962 that Irish official documents began to be clear that there was a difference between citizenship as nationality and citizenship as the capacity to exercise rights. The current British passport still says ‘Nationality: British citizen’.

However, from a longer historical perspective, we can see that citizenship is not the same as nationality but is about enabling people to participate in creating, maintaining and enjoying the good society, whether the people belonging to a society inhabit a citadel, a city-state, a locality, an empire, the world—and since John Stuart Mill and especially in Germany, the work-place. In the young United States of America, a century before the ruling just mentioned, and at the time of the making of the Constitution, there was no sense of an overarching American national identity and this did not evolve for a very long time. But there were citizenship rights, even if undemocratic by today’s standards, and the best way of protecting them was a passionate bone of contention between The Federalists and the Anti-Federalists. More recently, a survey of eleven European countries shows no wholly systematic pattern of attaching nationality restrictions to legal and

3 Aron, Raymond, "Is Multinational Citizenship Possible?", *Social Research* 41 (4), 1974, pp. 638 –56.

social entitlements and rights to participate in politics.[4] For example, the British are aliens under Irish law but British nationals resident in Ireland now have most of the rights of citizenship. The Irish are neither alien nor British under United Kingdom (UK) law but, like resident Commonwealth nationals, have always been able to exercise all the rights of citizenship. In the EU, rules about who a state's nationals are and how that nationality may be acquired or lost remain matters for national decision-making. For those who have been defined as nationals of member states, EU citizenship is about participation and the enjoyment of 'the good society' in the Union as a whole. As noted in conclusion, the European 'good society' is criticized as libertarian—offering private rights to individuals. But, it may be worth noting that the preambles to its directives on social policy often echo, if dimly, the classical conception of the 'good society' as a collective moral order of justice and conviviality.

3. EU Citizenship

Jacques Santer described the Treaty of Amsterdam as 'set[ting] out the rules of the game Governments will have to observe' and 'establish[ing] rights for all the citizens'[5]. Union citizenship, however, came into being formally in Article 8 of the Maastricht Treaty [agreed in 1991, operational from November 1993]. As a personal status, it was confirmed in the Amsterdam Treaty which also consolidates and extends citizens' and human rights—at least potentially.

3.1 Rights Prior to Amsterdam

The Maastricht Treaty went some way to acknowledging criticism that the EU did not recognize people as citizens because they were human beings but only as workers or providers of services who needed not to lose rights when

4 Gardner, J.P.(ed.), Citizenship: The White Paper. London: The Institute for Citizenship 1997.

5 European Commission, A New Treaty for Europe. Citizens´ Guide. Luxembourg 1996, p.2.

moving. Under that Treaty, a citizen of the Union is anyone, worker or not, who is a national of a member state. The Treaty took another step towards a more universalistic justification for citizenship by referring to the relevance to the EU of the European Convention on Human Rights and Fundamental Freedoms (ECHR). It incorporated rights to information and redress within the common institutions, and required member states to agree upon arrangements for certain transnational political rights—the right of a national of any member state to be protected by the diplomatic and consular services of another state when outside the Union and the rights to vote and stand for office in municipal and European elections [not General Elections] wherever they reside within the union. Though citizenship is often considered an individualistic concept, it is notable that the Maastricht Treaty 'constitutionalized' a channel for people collectively to influence common policies through the Committee of the Regions. Though this Committee is sometimes judged to be a piece of window dressing, the development of regions in Europe or, at least, 'multi-level governance' has been significant to the strengthening of demands in parts of the UK for greater 'self-determination'. I shall return to this in conclusion.

Before the notion of citizen acquired a formal political status in the Maastricht Treaty, elements of common citizenship were already arising from the 1957 Treaty of Rome; that is, if we accept the view of its best known modern exponent, T. H. Marshall, that citizenship is only fully realized through an interlocking triad of civil, political and social rights.

The goal of freedom of movement [Article 118 of the Treaty of Rome] is the foundation for some equivalents of traditional civil rights, since elucidated in the jurisprudence of the European Court of Justice (ECJ); for example, relating to residence, the administration of justice and ownership of immovable property—for economically active migrants within the Community. Almost from the outset, the ECJ established that the Treaty of Rome gave a common legal right to individual nationals, migrant or not. This was their right to expect, and duty to ensure, that states, including their own, complied with Community law (*van Gend en Loos v. Nederlandse Administratie der Belastingen*, Case No 26/62, [1962] ECR 1).

European social rights are not directly redistributive. Rather, the Community regulates entitlements [mainly for workers] in member states through legal principles, the most important of which is non-discrimination. The principle of freedom of movement gave rise to two Regulations outlawing nationality-based discrimination against migrant workers' access to insurance-based social benefits [revised as Regulation 1408/71] and against them and their families in other social assistance [revised as Regulation 1612/68]. Sex-based discrimination was made unlawful in Article 119 of the Treaty of Rome which required equal pay for men and women doing the same work. Between 1975 and the mid-1980s, five Directives followed which: widened the scope of equal pay; extended the right of equality into other conditions of employment; applied the principle to statutory and occupational social security schemes; and gave comparable entitlements to self-employed women. Another Directive, passed in 1992 under the Health and Safety Framework, protects pregnant women workers and guarantees levels of maternity pay and leave. Three others in the 1990s, arising from agreements concluded through 'social dialogue', cover parental leave and leave for family reasons, the burden of proof in cases of discrimination, and part-time work.

Rights not based on the non-discrimination principle include: Directives in the 1980s on consultation over redundancy plans and protection of employment conditions when business is transferred to another undertaking; and others, stemming from the Single European Act of 1987, requiring consultation and protection in situations of risk and hazard at work. The latter, and others relating to the young and elderly, were introduced through the 1989 Community Charter of Fundamental Social Rights of Workers. Under the auspices of Social Dialogue and the Maastricht Treaty, further steps have been, or are being, taken with respect to working conditions [eg, working hours, part-time contracts] and workers' rights of consultation in transnational companies, though the latter fall short of the high standards set

by the German co-determination model[6]. These areas are also covered by the Amsterdam Treaty.

3.2 The Treaty of Amsterdam

The Treaty of Amsterdam does little to enhance transnational or supranational political rights. But is does contain a number of provisions relating to human rights and it reflects a growing realization amongst governments, particularly those recently holding the EU presidency, that the policy concerns of citizens need to be more systematically addressed.

Prior to the Amsterdam Treaty, there was discussion of whether the EU itself would subscribe to the ECHR. No agreement on this could be found and a compromise worked out by the Irish Presidency in 1996 found its way into the final draft.[7] The Treaty, which was agreed upon in June 1997, amends the general principles of the Union, laid down in Maastricht, to focus upon 'liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law' (Amended Article F of Maastricht). The amended Article affirms that rights specified in the European Convention will be respected as principles of Community law. A new paragraph in the Preamble adds confirmation of respect for the social rights of the 1961 European Social Charter [an addendum to the Convention] and the Community's own 1989 Charter.[8] A new Article 6a amends the Treaty of Rome to enable the EU to take action, if it wishes, 'to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'[9]

In this connection, two changes in the UK are noteworthy as an indication of a greater willingness to play a more central role in European integration. Soon after winning the 1997 General Election, the new Labour Government announced that it would end the 'opt-out' from further EU social

6 Elizabeth Meehan, Ireland´s Choice to Prioritize Free Movement with the United Kingdom over Free Movement in the European Union, Blue Paper, The Policy Institute, Trinity College Dublin (forthcoming).
7 Insitute of European Affairs, IGC Updates, Nos 1-9, esp. no. 9 of 24.6.97, Institute of European Affairs, Dublin 1997.
8 European Commission 1996, p.9.
9 Ibid, p. 9.

developments that the previous government had secured in the Maastricht Treaty, thus enabling social policy to be brought into the main body of the Amsterdam Treaty. Secondly, the government has introduced legislation to incorporate the ECHR into domestic law—welcomed as a 'step in the right direction', though also criticized for its limitations.[10]

The concrete provisions of the Amsterdam Treaty designed to buttress the principles noted above do not extend Maastricht's primary political rights to General Elections. But the Treaty does introduce new legal and secondary political rights which could, depending on implementation, become significant.

New legal and political protection includes: the entitlement of individuals to take EU institutions to the ECJ over any action which they think breaches their rights and new Articles [Fa in the Maastricht Treaty and 236 in the Rome Treaty] which enable the European Council to deal with a member state in 'serious and persistent breach' of the general principles of rights, including suspending its voting rights.

The Amsterdam Treaty also covers the ability of citizens to influence or participate in Union policy. For example, a Protocol on subsidiarity,[11] while mostly about the respective responsibilities of states and common institutions stresses the need for consultation and a new Article adds openness to the need for decisions to be taken as closely as possible to the citizen.[12] Rights of access to the documents of the Commission, Council and Parliament are re-affirmed[13] and the Council is obliged to make public the record of voting on legislation.[14] Communication with citizens should be in their own language

10 Aziz, Adrienne, "Human Rights: Home at last but still found wanting", in: AUT Bulletin, No. 211, January 1999.
11 European Commission, 1996, Chapter 9.
12 Duff, Andrew (ed.), The Treaty of Amsterdam: Text and Commentary. London: The Federal Trust and Sweet and Maxwell 1997, p.100-109.
13 European Commission 1996, p. 94.
14 Ibid, p. 7.

[new Article 8d, Maastricht].[15] Individuals are protected against the misuse of personal data [new Article 213b in the Treaty of Rome].

The Treaty aims to improve the capacities of peoples' elected representatives to act on their behalf through more efficient arrangements for scrutiny of EU proposals by national parliaments (ibid, Chapter 19) and by the extension, and simplification, of the European Parliament's co-decision-making powers *vis a vis* the Council of Ministers (ibid, Chapter 14). There are additional obligations on the European Parliament to consult the Economic and Social Committee and the Committee of the Regions (*ibid*, Chapter 18).

The civil right of freedom of movement is consolidated by the introduction of a new Title III (a) into the Treaty of Rome. This lifts controls on persons crossing borders between member states; aims to establish, over the next five years, common standards in respect to entry at external borders, visas, immigration and free movement for lawful residents who are nationals of third countries, refugees and asylum-seekers; and it deals with judicial co-operation over civil matters. In effect, this will bring the Schengen *acquis* and much of the subject matter of the intergovernmental third pillar of Maastricht [now left with police and judicial co-operation over criminal matters] into the ambit of common policy initiation, with some role for the European Court of Justice.[16] Protocols allow derogations for Denmark, the UK and Ireland. All three may participate in proposed initiatives if they are seen as consistent with interests. The Danish position does not reflect opposition to the lifting of checks but arises from its insistence that 'flanking' measures dealing with immigration and co-operation should remain intergovernmental and be decided upon, finally, in national parliaments. The UK does resist the lifting of checks. Again, however, the outcome reflects something of a reorientation towards the EU. The previous government would have vetoed 'the communitarization of Schengen' but the new one took the view that it should not stand in the way of what other states wanted, on the condition that it could be exempt. The Irish negotiated similar exemptions in order to preserve

15 European Commission 1996, p.76.

16 Government of Ireland, Treaty of Amsterdam White Paper, Pn 4931, Dublin: The Stationary Office 1998, pp. 42-47, 54-67.

the Common Travel Area between it and the UK but made its distinctive position clear in the wording of the Protocols.[17]

Despite controversy prior to agreement over [un]employment and poverty, the Amsterdam Treaty extends its scope for action in the socio-economic sphere into two new chapters. One on employment does not intend to expand citizens' rights but aims to coordinate national policies, under EU guidance and monitoring, so as to achieve 'a high level of employment' and 'a skilled, trained and adaptable workforce'.[18] Rights at work, excluding pay and industrial disputes but including consultation over proposals with the 'social partners', are part of the subject of the chapter on social policy. This promises further directives to improve consultation, to reduce exclusion from the labour market [and, therefore, one source of poverty] and to make sex equality more real. In response to an unfavorable ruling on positive action in the ECJ (*Kalanke v. Freie Hansestadt Bremen*, ECJ [1995] Case C-450/93), the chapter explicitly authorizes measures 'to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers'. Action is promised—though mostly subject unanimous voting—on social security, conditions when contracts are terminated, worker participation in company policy, employment conditions for 'third country' nationals, and job creation.

Other conditions which affect the lives of citizens are also covered. Proposed actions include: harmonized and national measures to reduce environmental risks in general and at work, including impact assessments of all policies; the overcoming of major health scourges and attention to the health implications of all other policies; and consumer protection.

4. Assessments of EU Citizenship and its Prospects

Assessments of EU citizenship and its prospects are contradictory, possibly being determined by divergent general ideological and epistemological

17 Meehan, Elizabeth, Ireland´s Choice, ibid.

18 Duff, Andrew, The Treaty of Amsterdam: Text and Commentary, London: Federal Trust and Sweet and Maxwell 1997, pp. 59-65.

outlooks. Sometimes, they seem guided by whether the commentator favors or opposes European integration (Meehan, 1996). Sometimes, they seem to depend on whether the analyst is a positivist who examines only what exists concretely and compares its slightness to national provisions—but overlooking the contrast between decades and centuries of evolution in the EU and national systems respectively (Meehan, 1993). Conversely, other analysts suggest that what is important is not the size but the dynamics of change; that is, the fact that established norms have been breached at all opens the possibility, though not the inevitability, of new paradigms.

The oldest criticism of EU citizenship starts from the limitations of the Treaty of Rome as a basis for rights. These being restricted to the freedom of movement of goods, capital, labor and services mean that European rights were restricted to the 'citizen-as-worker' instead of reflecting the normative principle that people are citizens because they are human beings. This makes it particularly defective for women and all those not in regular, conventional employment. Also, although ECJ jurisprudence tended to expand the scope of rights and to limit anomalies within and across states, at least until the 1980s, the legal instruments and enforcement procedures can make it difficult to realize rights that are, in practice, common across the Community. It is also argued that the evolution of European citizenship replicates in a larger arena the physical and social exclusion of people without the right nationality. ['Third country' migrants within the Community, however, do have some protection under the original Treaty of Rome, if they are members of a migrant EU family or as a result of agreements between the Community and third countries.]

Concerns about the narrowness of rights began to be acknowledged in the mid-1970s, grew with the momentum of discussion of an 'ever closer union' in the 1980s, and were reflected in the Maastricht Treaty. Though there are positive assessments of Maastricht and prior developments, the 1991 Treaty has been criticized for not going far enough.

All critics note that the status and, hence, rights of EU citizens continue to rest upon nationality of a member state and that this remains a prerogative of member state governments—though recently, the UK government was taken

to task for denying the right to vote in European elections to Gibraltarians [British Protected Persons, until full nationality was restored to colonial citizens earlier this year]. They also note the exclusion of General Elections and potential derogations from provisions for municipal and European elections. These are possible where there are specific problems, especially questions of national identities, as in Luxembourg where the proportion of residents from other member states is larger than elsewhere.[19] O'Leary[20] argues that: the pre-existing direct link [*van Gend en Loos*—see above] between individuals and the centre is slight, a view reinforced by a German ruling about the 1991 Treaty [*Manfred Brunner and others v. The European Union Treaty* , Cases 2 BvR 2134/92 and 2159/92 [1994] 1 CMLR 57];[21] the new voting rights are little more than reciprocal arrangements which could exist, and sometimes do, irrespective of union; and that it will be difficult in practice to use the right to diplomatic and consular protection by other member states. Curtin and Meijers[22] identify hypocrisy on the part of member state governments, except Denmark and the Netherlands, in their ostensible intention to enhance rights to information. Member states' restrictive applications of these measures to information about border policies reinforce at a European level the 'closure' effects of citizenship on people from outside.[23] In the social field, the Commission's capacity to expand a regulatory regime of rights is restricted to what it may opportunistically

19 Closa, Carlos, "Citizenship of the Union and Nationality of Member States", in Common Market Law Review, no. 32, 1995, pp.487-518.

20 O´Leary, Siofra, "The Relationship between Community Citizenship and the Fundamental Rights in Community Law", in: Common Market Law Review, no. 32, 1995, pp.519-544.

21 See also Harmsen, Robert, Integration as Adaption: National Courts and the Politics of Community Law, Paper presented at the Annual Conference of Political Studies Association of Ireland 1994.

22 Curtin, Deirdre; Meijers, Herman, "The Principle of Open Government in Schengen and the EU: Democratice Retrogression", in: Common Market Law Review no. 32 1995, pp. 391- 442.

23 See also Kostakopoulou, Dora, "Is there an Alternative for Schengenland ?", in Political Studies, no. 46 (4), 1998, pp.886-902.

introduce in a context of a reluctant Council of Ministers.[24] Critics of Maastricht also stress the limitations of local partnership, regional subsidiarity and the status, powers and budget of the Committee of the Regions. Such criticisms would need to be met if the Amsterdam Treaty is, indeed, to live up to its promise outlined by Jacques Santer.

So far there has been a cautious welcome for the Amsterdam Treaty. Positive views (eg, Oreja, 18.6.97; IEA, 24.6.97) have been expressed about: the adoption of strong normative principles of rights; the new basis for combatting more forms of discrimination; the procedures for dealing with infringements of rights; the inclusion of the Employment Chapter; the references to reducing exclusion; and the proposal to set standards for 'third country' nationals at work and in free movement. The Treaty's references to national and Union representative bodies goes a little way towards Chryssochoou's insistence that 'democratic deficits' need to be addressed on both planes if the experience of citizenship is to be realized in full.[25] On the other hand, the Commission itself reflects some of the concerns of voluntary organisations by regretting the limitations of social policy. It also notes that 'the institutional system is not yet entirely equal to the challenges' and regrets the opaqueness of the Treaty's text (Oreja, 18.6.97). Moreover, 'under many ... headings, ... the provisions may be criticized as being general rather than specific and aspirational rather than tangible' (Institute of European Affairs, 24.6.97).

But, as a foil to criticisms of the limitations of Maastricht, there is an alternative assessment of EU developments which can be applied equally to Amsterdam. For example, Weiner argues that citizenship, including 'access' and 'belonging' as well as rights, has never been static or uniform. She identifies in the history of integration confluences of policy imperatives and

24 Mazey, Sonia, "The Development of EU Policies: Bureaucratic Expansion on Behalf of Women ?", in Public Administration no. 73 (4) 1996, pp.591-609.

25 Chryssochoou, Dimitris, "Democratic Theory and European Integration: the Challenge of Conceptual Innovation", in Smith, Hazel (ed.), New Thinking in Politics and International Relations, Canterbury 1996, pp. 20-33.

the interests of key political actors which have created breaches in nation-state experiences of citizenship and opportunities for new paradigms and practices.[26]

In her account, the regulation of social rights and relations between Community institutions and the 'social', local and regional 'partners' [pre-dating Maastricht] are part of 'access' and 'belonging'. The period of acceleration towards union is, in Weiner's account, a time of discernible movement in the paradigm of citizenship, containing the seeds of new practice in the activation of rights. In particular, markets and migration make 'place', as well as nationality, the conceptual and practical pre-condition for triggering legal, political and social entitlements. This could become significant not only for nationals of member states but also for lawfully resident 'third country' migrants, as seems to be beginning in Amsterdam.

Even if early reactions to the Amsterdam Treaty are guarded, the movement reflected in it seems to vindicate O'Keefe's view that '[t]he importance of the TEU [Maastricht] citizenship provisions lies not in their content but rather in the promise they hold out for the future. The concept is a dynamic one, capable of being added to or strengthened but not diminished'.[27] The same can be said, in turn, about Amsterdam. Moreover, the EU's ability to sustain its dual claim of being 'for its citizens' while also 'respect[ing] the national identities of its Member States' depends upon such dynamism.[28]

All stories of rights, however, depend on what people make of them. If they are to result in real redistribution of power or influence, much depends on the ability of civil society 'to seize the day'. Closa sees more potential, in principle, in supranational than national arenas for democratic citizenship. In practice, he suggests however, that European civil society may be too fragile to transform EU citizenship into an arena for democratic self-determination

26 Weiner, Antje, Building Institutions: The Developing Practice of European Citizenship, Ottawa: PhD Thesis, Carleton University 1995.
27 Chryssochoou, p. 30.
28 European Commission, 1997, p.5.

from what he calls an enhanced set of private rights to make the most of new market opportunities [or be sheltered a little from its threats].[29]

His argument rests on a critique of the case that a shared national identity is a pre-condition for citizenship. For, by insisting that citizenship can be built only on such bonds, such theories propose that a democratic practice be based on a commonality that was formed under pre-democratic conditions. In contrast, a site of democratic citizenship is one in which people live together under a set of principled bonds, such as those identified by Robert Dahl as voting equality, effective participation, enlightened understanding, control of agendas and inclusiveness. In drawing this contrast, Closa suggests that supranational citizenship is less vulnerable than national citizenship to charges of exclusion and discrimination because, being unable to draw on comparable non-principled bonds, its success must depend on democratic and human rights norms.

Dahl, of course, is a citizen of that country which I mentioned earlier where democratic norms and ties [albeit defective] preceded national bonding. In contrast, Britishness was forged by elites, prior to democracy, to make bonds between peoples who had been enemies of one another. It worked for some centuries, in the context of different sub-state national identities, as principled bonds were grafted on to the pre-democratic unifications. But the fragility of the origins is re-emerging and there are claims, at least in Scotland, and to some extent, Wales, which support Closa's case; that is, that, from a democratic basis, a new union of principled norms can be negotiated at the supranational level—the EU.

The idea that a multi-state supranational union may be preferable to union with a single neighbour arises from experience among the component peoples of the UK in trying to make what Closa calls their private EU rights have public consequences. That is, people—not only nationalists but also

29 Closa, Carlos, "European Citizenship, Mulitculturalism, and the State", in Ulrich Preuss/Ferran Requejo (eds.), European Citizenship, Multiculturalism, and the State, Baden-Baden: Nomos-Verl.-Ges. 1998; Closa, "Supranational Citizenship and Democracy: Normative and empirical Dimensions", in: M. Torre (ed.), European Citizenship: An International Challenge, Kluver Law International 1998.

advocates for their regions—whose material interests are enhanced by learning to use EU partnership opportunities are trying to redefine their relationship to the domestic state in a European context, to bring about new forms of mobilization and interaction, and to influence agendas. But, again in line with Closa's theoretical case, unification into the British state left civil society institutions intact, especially in Scotland and Northern Ireland and, hence, in a position to try either to improve the principled bonds of the British state or to negotiate new ones in a different arena.

Closa is guarded about whether there is a strong enough civil society in the EU to transcend the defects of national citizenship in order to bring about the benefits of a regime based on principled bonds—without a willingness on the part of states themselves to agree to stop trying to maintain the impression that anxieties about national identities are well attended to in EU provisions. The changes which he suggests are necessary and include the avoidance of derogations and exemptions which 'offer shelter to communitarian understandings of the relationship between individuals and the state premissed on nationality'; 'the full constitutionalization of a European political status'; greater opportunities for direct citizenship participation in EU affairs; stronger commonality and reciprocity of rights in different member states; and willingness by states to respond to 'spill-over' pressures from EU citizenship status on to varying nationality laws, including greater willingness to acknowledge dual or multi-nationality.[30] Something of the last is beginning to happen. Some 'spill-over' can be seen in Germany's intention to proceed with allowing citizenship through naturalization as well as ancestry, if not in its abandonment of making dual-citizenship legal. The ECJ is playing a role. The UK and Gibraltarians was mentioned above. Another case was about a person with dual-nationality—of a member state and a third country. The ECJ rejected another member state's claim to be free to recognise only the third country dimension and, hence, to deny rights.

If Closa is right about the weakness of European civil society, as a whole, in combatting a privatized, liberal or libertarian conception of citizenship, then

30 Closa, Carlos, ibid.

enlargement may reinforce the challenge. The prospective member states, while having to subscribe to principles of liberty, democracy and human rights as a condition of entry are not well placed to do so in practice—emerging as they are from totalitarianism which suppressed civil society or bent it to the will of the state. At a conference during the 1998 UK presidency, harrowing tales were told of the vulnerability of emergent civil society associations in the Balkans and of discrimination against minorities in east and east-central Europe. With or without minority problems, the concept of liberty—perhaps necessitated by dire economic conditions—is, even more libertarian than that which Closa sees in the EU. It is the negative one of 'freedom from' restraint—not the 'freedom to' which is implicit in Christian- and social-democracy and still has some place in the link in the EU model between social inclusion and economic progress. The point to be drawn here is not about the addition of more nationalities, either *per se* or in their further reduction of the overlap between nationality and citizenship. It is that growing mismatches amongst sets of principled bonds, not a more complex collection of pre-democratic identifications, may inhibit the transformation of EU citizenship along the lines aspired to by Closa.

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